91-998

No.

Supreme Court,
FILE
DEC 19 19
OFFICE OF THE CL

In the Supreme Court of the United States

OCTOBER TERM, 1991

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

NADER E. SOLIMAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

KENNETH W. STARR
Solicitor General

SHIRLEY D. PETERSON
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

KENT L. JONES
Assistant to the Solicitor General

RICHARD FARBER
TERESA E. MCLAUGHLIN
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether an office maintained by a self-employed person in his residence qualifies as his "principal place of business" under Section 280A of the Internal Revenue Code, 26 U.S.C. 280A—and the expenses related to that area of his home are therefore properly deducted in computing his taxable income—if he spends the majority of his time working elsewhere in the course of performing the services from which his income is derived.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statutory provision involved	2
Statement	2
Reasons for granting the petition	7
Conclusion	17
Appendix A	1a
Appendix B	12a
Appendix C	42a
Appendix D	44a
Appendix E	45a

TABLE OF AUTHORITIES

Cases:

Baie v. *Commissioner*, 74 T.C. 105 (1980)	10
Bodzin v. *Commissioner*, 60 T.C. 820 (1973), rev'd, 509 F.2d 679 (4th Cir.), cert. denied, 423 U.S. 825 (1975)	9
Drucker v. *Commissioner*, 715 F.2d 67 (2d Cir. 1983)	4, 8, 10, 13
Estate of Leavitt v. *Commissioner*, 90 T.C. 206 (1988), aff'd, 875 F.2d 420 (4th Cir.), cert. denied, 493 U.S. 958 (1989)	15
Meiers v. *Commissioner*, 782 F.2d 75 (7th Cir. 1986)	4, 8, 11, 13-14
Newi v. *Commissioner*, 432 F.2d 998 (2d Cir. 1970)	9
Pomarantz v. *Commissioner*, 867 F.2d 495 (9th Cir. 1988)	6, 7, 11, 14
Weissman v. *Commissioner*, 751 F.2d 512 (2d Cir. 1984)	4, 6, 8, 10, 13

Statutes:

Internal Revenue Code of 1954 (26 U.S.C.):	
§ 161	8

Statutes—Continued: Page

§ 162 ..... 8, 9
§ 261 8
§ 280A 2, 3, 4, 5, 7, 8, 9, 12
§ 280A (a) 8
§ 280A (c) (1) (A) 8, 9
§ 280A (c) (1) (B) 8
§ 280A (c) (1) (C) 8
Tax Reform Act of 1976, Pub. L. No. 94-455, § 601, 90 Stat. 1569-1572 9

Miscellaneous:

45 Fed. Reg. 52,399 (1980) 15
48 Fed. Reg. 33,320 (1983) 15
H.R. Rep. No. 658, 94th Cong., 1st Sess. (1975) 9
Proposed Treas. Reg. § 1.280A-2 (b) (3) 6, 15
Random House Dictionary of The English Language (2d ed. 1987) 10
S. Conf. Rep. No. 1236, 94th Cong., 2d Sess. (1976) 13
S. Rep. No. 938, 94th Cong., 2d Sess. Pt. 1 (1976) .. 9, 13
N.Y. Times, Mar. 11, 1990 16

In the Supreme Court of the United States

OCTOBER TERM, 1991

No.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

NADER E. SOLIMAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the Commissioner of Internal Revenue, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-11a) is reported at 935 F.2d 52. The opinion of the Tax Court (App., *infra*, 12a-41a) is reported at 94 T.C. 20.

JURISDICTION

The judgment of the court of appeals was entered on June 5, 1991. A petition for rehearing with a suggestion of rehearing en banc was denied on August 22, 1991, with three judges dissenting (App., *infra*, 44a). The Chief Justice extended the time for filing a petition for a writ of certiorari to and in-

cluding December 20, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 280A of the Internal Revenue Code, 26 U.S.C. 280A, provides in pertinent part:

> **§ 280A. Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.**
>
> **(a) General rule**
>
> Except as otherwise provided in this section, in the case of a taxpayer who is an individual or an S corporation, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence.
>
> * * * * *
>
> **(c) Exceptions for certain business or rental use; limitation on deductions for such use**
>
> **(1) Certain business use**
>
> Subsection (a) shall not apply to any item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis—
>
> (A) [as] the principal place of business for any trade or business of the taxpayer[.]
>
> * * * * *

STATEMENT

1. Respondent is a self-employed anesthesiologist. During 1983, respondent practiced his profession at Suburban Hospital in Bethesda, Maryland, at Shady Grove Hospital in Rockville, Maryland, and at Loudon Memorial Hospital in Leesburg, Virginia, where he administered anesthesia to patients, cared for patients immediately after surgery, and treated patients for pain. He spent 30 to 35 hours each week working at these three hospitals. Approximately 80 percent of that time (or about 28 hours each week) was spent at Suburban Hospital. None of the hospitals provided respondent with a personal office (App., *infra*, 2a).

Respondent used a spare bedroom in his residential condominium as an office, where he kept patient records, correspondence, billing records, medical journals and texts. Respondent worked two to three hours a day in his home office, where he spoke on the telephone with surgeons, patients, and hospitals, kept records, prepared for treatments and presentations, satisfied continuing medical education requirements and kept abreast of advances in anesthesiology (App., *infra*, 2a, 8a; C.A. App. 99).

In his federal income tax return, respondent claimed deductions for condominium fees, utilities, and depreciation attributable to the home office. He also claimed deductions for expenses incurred in driving between his residence and the hospitals (App., *infra*, 9a). The Commissioner disallowed these deductions because the office was not respondent's "principal place of business" under Section 280A of the Internal Revenue Code, 26 U.S.C. 280A (App., *infra*, 2a).[1]

2. Respondent filed a petition in the Tax Court seeking review of the resulting deficiency (App.,

---

[1] Unless otherwise indicated, all statutory references are to the Internal Revenue Code of 1954 (26 U.S.C.), as amended and in effect during the year in issue (1983).

infra, 2a). A divided Tax Court concluded that respondent's home office was his "principal place of business" within the meaning of Section 280A. The Tax Court majority noted that it previously had regarded the "focal point" of a taxpayer's business—*i.e.*, the place where goods and services are provided to customers and revenues are generated—as his "principal place of business" (*id.* at 18a). Under that "focal point" test, the court stated, respondent's office at home was not his "principal place of business" because the activities respondent performed at home, while "essential to his medical practice" (*ibid.*), were "ancillary to the primary income-generating services [respondent] performed as an anesthesiologist at the hospitals" (*ibid.*).

The Tax Court majority observed (App., *infra*, 13a-14a), however, that the validity of the "focal point" test had been questioned by the courts of appeals in three cases reversing Tax Court decisions holding that the taxpayer's home office was not his "principal place of business." See *Drucker* v. *Commissioner*, 715 F.2d 67 (2d Cir. 1983); *Weissman* v. *Commissioner*, 751 F.2d 512 (2d Cir. 1984); *Meiers* v. *Commissioner*, 782 F.2d 75 (7th Cir. 1986). The court therefore concluded that it would no longer follow its "focal point" test and stated that it would instead regard a taxpayer's office at home as his "principal place of business" within the meaning of Section 280A when the "taxpayer's home office is essential to his business, he spends substantial time there, and there is no other location available to perform the office functions of the business" (App., *infra*, 24a). The court held that respondent's home office satisfied this standard even though respondent spent a greater part of his working time at Suburban

Hospital, where he performed his most important work (*id.* at 23a).[2]

Chief Judge Nims dissented, joined by Judges Chabot, Parker, Clapp and Parr. He pointed out that, in the decisions upholding home-office deductions, the most important factor "was that the taxpayer spent the majority of his or her business time at the 'home office,' rather than at the place where goods or services were provided to customers or clients or where income is produced" (App., *infra*, 28a). Chief Judge Nims criticized the analysis of the Tax Court majority because it would allow deductions for home-office expenses even when the home is *not* the "principal" place of business, as the statute requires. The majority's test ignores the very reason that Section 280A was enacted: it "takes us all the way back to square one; i.e., to the situation which existed even before Congress took what it thought would be the remedial action of section 280A" (App., *infra*, 29a).

Judge Rüwe dissented in a separate opinion, joined by Chief Judge Nims and Judges Clapp and Parr. Judge Rüwe noted that the test adopted by the Tax Court majority "eliminates the need to compare the importance of home office activities with the importance of activities at the other place of business or to compare the amount of time spent at the home office with the amount of time spent at the other place of business" (App., *infra*, 32a). In his view, the taxpayer's "principal place of business" is the place where the "dominant portion of his work is accom-

---

[2] The Tax Court also allowed petitioner to deduct the expenses of traveling between his home and the three hospitals, based on the court's finding "that petitioner's home office is his principal place of business" (App., *infra*, 21a). On appeal, the court of appeals did not discuss this issue separately.

plished" (*ibid.*, quoting from *Weissman* v. *Commissioner*, 751 F.2d at 514). Judge Rüwe concluded that, in overruling the "focal point" test, the Tax Court majority failed to make "a specific qualitative determination that the home office activities were at least as important to the taxpayer's business as the activities performed away from the home office" (*id.* at 36a). Judge Rüwe also pointed out (*id.* at 37a-39a) that the decision in this case conflicts with *Pomarantz* v. *Commissioner*, 867 F.2d 495, 497-498 (9th Cir. 1988), where the court of appeals held that the "principal place of business" of an emergency room physician was the hospital where the taxpayer spent the majority of his working time and performed the most important tasks of his profession.

3. A divided court of appeals affirmed. The majority noted (App., *infra*, 4a n.2) that the "focal point" test had been criticized in *Drucker*, *Weissman* and *Meiers*. The court concluded that the new test adopted by the Tax Court in this case "does not eviscerate the requirements of section 280A, but simply replaces the inflexible and potentially unjust 'focal point' test" with a standard that "more accurately reflects the purposes and requirements of section 280A" (*id.* at 6a (footnote omited)). The court stated that the new test adopted by the Tax Court also is consistent with Proposed Treas. Reg. § 1.280A-2(b)(3), which would allow traveling salesmen to deduct "home office" expenses even though they spent most of their time on the road, provided that they spend a substantial amount of time doing paperwork at home. Although the majority acknowledged that the proposed regulation was not binding on the Commissioner, it concluded that it "does evince a policy to allow 'home office' deductions for taxpayers who maintain 'legitimate' home offices, even if the taxpayer does not spend a majority of his time in the office" (App., *infra*, 5a-6a).

Judge Phillips dissented because the Tax Court analysis "eliminates any need for comparing a taxpayer's use of several business locations to determine which constituted his 'principal place of business'" (App., *infra*, 8a). He observed that "the term 'principal place of business' compels an inquiry directed to that specific question—which is the *one* that is 'principal.' Otherwise Congress could have used language such as 'essential place of business' or 'necessary place of business'" (*ibid.*). Judge Phillips noted that all other decisions upholding deductions for home-office expenses involved "situations where the taxpayer spent the majority of his time in his home office, or did his most important work there, or both" (*ibid.*). Judge Phillips concluded (*ibid.*) that the court should have followed the decision of the Ninth Circuit in *Pomarantz* v. *Commissioner*, 867 F.2d at 497-498, where an emergency care physician's deduction of "home office" expenses was disallowed because his home was not his "principal" place of business.

REASONS FOR GRANTING THE PETITION

The court of appeals held that an office located in a taxpayer's residence—where he performs purely administrative functions of his business—may be considered his "principal place of business" under Section 280A even though the taxpayer spends a greater part of his working time, and performs his most important professional functions, at another place. This holding is in direct conflict with the decision of the Ninth Circuit in *Pomarantz* v. *Commissioner*, 867 F.2d at 497, and conflicts with the reasoning of the

decisions of the Second Circuit in *Drucker* v. *Commissioner*, and *Weissman* v. *Commissioner*, and of the Seventh Circuit in *Meiers* v. *Commissioner*. The issue presented in this case affects many thousands of individuals who maintain offices in their homes but spend more time and perform their most important income-producing tasks at other places of business. Unless the conflict is resolved by this Court, these individuals will receive disparate tax treatment based entirely upon the happenstance of their geographical location.

1. To be deductible, the expenses of maintaining a home office must not only be "ordinary and necessary" expenses of the taxpayer's business under Section 162 of the Code, they must also satisfy the additional requirements of Section 280A. See 26 U.S.C. 161, 261. Section 280A(a) provides generally that no deduction is allowable "with respect to the use of a dwelling unit which is used by the taxpayer * * * as a residence." 26 U.S.C. 280A(a). Section 280A(c)(1)(A) makes an exception to the general rule of nondeductibility, however, "to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis" as the "principal place of business for any trade or business of the taxpayer." 26 U.S.C. 280A(c)(1)(A).[3]

[3] Expenses attributable to a home office that is *not* the taxpayer's "principal place of business" may be deducted if the office is used regularly and exclusively "as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business" (Section 280A(c)(1)(B)) or if the office is housed in "a separate structure * * * not attached to the dwelling unit" (Section 280A(c)(1)(C)). 26 U.S.C. 280A(c)(1)(B) and (C).

In this case, it is undisputed that taxpayer did not meet with or treat patients at home. There is also no claim that the home office was located in a separate structure not attached to the dwelling unit.

Section 280A was enacted as part of the Tax Reform Act of 1976, Pub L. No. 94-455, § 601, 90 Stat. 1569-1572. The statute responded to what Congress perceived to be "a great need for definitive rules * * * as to the correct standard governing the deductibility of expenses attributable to the maintenance of an office in the taxpayer's personal residence" (H.R. Rep. No. 658, 94th Cong., 1st Sess. 160 (1975); S. Rep. No. 938, 94th Cong., 2d Sess. Pt. 1, at 147 (1976)). Prior to enactment of Section 280A, courts had permitted the deduction of "home office" expenses under Section 162 whenever such expenses were "appropriate and helpful" to the taxpayer's business. See, *e.g.*, *Newi* v. *Commissioner*, 432 F.2d 998 (2d Cir. 1970); *Bodzin* v. *Commissioner*, 60 T.C. 820 (1973), rev'd, 509 F.2d 679 (4th Cir.), cert. denied, 423 U.S. 825 (1975). Congress was concerned that (H.R. Rep. No. 658, *supra*, at 160; S. Rep. No. 938, *supra*, at 147):

> [i]n many cases the application of the appropriate and helpful test would appear to result in treating persona! living, and family expenses which are directly attributable to the home (and therefore not deductible) as ordinary and necessary business expenses, even though those expenses did not result in additional or incremental costs incurred as a result of the business use of the home.

In enacting Section 280A, Congress intended substantially to limit the deductibility of "home office" expenses by establishing stringent, objective standards for deductibility. To this end, Congress generally precluded the deduction of such expenses except

when the home office is the taxpayer's "principal place of business." 26 U.S.C. 280A(c)(1)(A); see also note 3, *supra*.

2. The term "principal place of business" is not defined in the statute. Prior to the decision in this case, however, the courts of appeals had consistently applied the statutory term "principal" to mean the primary or chief place of the business conducted by the taxpayer. This comports with the dictionary definition of the word "principal," which is "first or highest in rank, importance, value, * * * chief, foremost." *Random House Dictionary Of The English Language* 1539 (2d ed. 1987).

The determination of a taxpayer's "principal place of business" requires a comparison of the various locations where the taxpayer carries on his trade in order to determine the most significant, or "principal," place of business. Before it issued its decision in this case, the Tax Court had used a "focal point" test for this purpose. The "focal point" test required a comparison of such objective factors as the location where goods and services are provided to customers or clients, the length of time spent by the taxpayer at each place of business and the relative amount of income generated at each place of business. See, *e.g.*, *Baie* v. *Commissioner*, 74 T.C. 105 (1980). The Second and Seventh Circuits cited these same factors, but gave greater weight to the *time* spent by the taxpayer at each location and the importance of the functions performed at each, with less emphasis on the location where income is produced. *Drucker* v. *Commissioner*, 715 F.2d at 69 (majority of concert musician's work time spent practicing at home); *Weissman* v. *Commissioner*, 751 F.2d at 514 (college professor had no office on campus and spent 80% of his

time working at home); *Meiers* v. *Commissioner*, 782 F.2d at 79 ("a major consideration ought to be the length of time the taxpayer spends in his home office"). The Ninth Circuit, while declining to adopt "a specific standard," determined in *Pomarantz* v. *Commissioner*, 867 F.2d at 497-498, that the taxpayer's "principal place of business" is the place where he "consistently spen[ds] more time on duty," where he exercises the skills constituting "[t]he essence of his profession," and where he "generate[s] income." Prior to the decision in this case, no court had held that a taxpayer's home could be regarded as his "principal place of business" even though he spent more of his working time and performed his most important work elsewhere.

3. The court below held (App., *infra*, 3a-5a), however, that respondent's spare bedroom was his "principal place of business" because (i) an office was essential to his business, (ii) the hospitals (where he spent most of his working time) did not provide him with an office and (iii) he spent a substantial amount of time (approximately ten hours per week) performing administrative tasks related to his profession in his home office. Under the criteria adopted by the court of appeals in this case, if the taxpayer's home office is appropriate and necessary to his trade or business, that office may constitute the taxpayer's "principal place of business" even though the bulk of the taxpayer's work is performed at some other location or locations. The word "principal" has thus been eliminated from the statute.

In this case, Suburban Hospital was respondent's "principal place of business" in any ordinary sense of the term. The operating room and the recovery room were the locations where respondent practiced

medicine, generated fees, and spent the greatest single segment of his working time. The three hospitals at which he practiced were, in the aggregate, the location of the preponderant majority of his working time. The essence of his profession as an anesthesiologist is the preparation for surgery, the administration of anesthesia to patients during surgery, and the care of those patients immediately after surgery, tasks that can not be performed other than at a hospital. The fact that respondent also spends ten hours per week doing paperwork in his spare bedroom did not make that room his "principal place of business."

4. The decision of the court of appeals conflicts with the decisions of other courts of appeals. Had the court engaged in a comparative analysis of the time and nature of the work performed by the taxpayer at various job locations—as required by the plain terms of Section 280A and by decisions of the Second, Seventh and Ninth Circuits—it would have been compelled to conclude that respondent's business was centered in the hospitals where he treated patients, not his office at home. As Judge Phillips noted in dissent, the test endorsed by the majority "avoids what I think a fair application of § 280A(c)(1)(A) flatly compels: a comparison of the uses of multiple business locations to determine which is *the* principal place of business of a taxpayer" (App., *infra*, 10a).

The standard for deductibility adopted by the majority is virtually the same as the "appropriate and helpful" test that Congress laid to rest in enacting Section 280A. As Judge Phillips observed in his dissent, Congress did not provide for the deduction of the expenses of maintaining a home office if that office was an "essential place of business" or a "necessary place of business" (App., *infra*, 8a). In fact, a proposed Senate amendment would have allowed a deduction for "home office" expenses "where no office or fixed location is provided by the employer for use by the employee" (S. Rep. No. 938, *supra*, at 149), but that proposal was rejected in conference (S. Conf. Rep. No. 1236, 94th Cong., 2d Sess. 435 (1976)). Instead, Congress made a deliberate legislative judgment to preclude the deduction of any expenses incurred in maintaining an office in a residence unless that office constitutes the taxpayer's "principal place of business." By ignoring this plain congressional mandate, the court of appeals has failed to honor the clear language and history of the statute.

The court of appeals misinterpreted (App., *infra*, 4a) *Drucker*, *Weissman* and *Meiers* in reaching its decision. Those cases support the Commissioner's position that respondent's "principal place of business" was Suburban Hospital, where he spent the largest segment of his working time, as well as the largest segment of his time engaged in practicing his profession. In choosing the taxpayer's "principal place of business," the Second Circuit in *Drucker* emphasized that "[b]oth in time and in importance, home practice was the 'focal point' of the appellant musicians' employment-related activities" (715 F.2d at 69). Similarly, in *Weissman*, that court defined "principal place of business" as "the place where the dominant portion of [the taxpayer's] work is accomplished" (751 F. 2d at 514). In *Meiers*, the Seventh Circuit compared the importance of the places of business "in terms both of hours worked and * * * of functions performed," and expressed the view that "a major consideration ought to be the length of time the taxpayer spends in the home office as opposed to

other locations" (782 F.2d at 79).[4] And, significantly, in *Pomarantz*, the Ninth Circuit held that the principal place of business of an emergency care physician was the hospital where he worked because he "consistently spent more time on duty at the hospital rather than at home" and "[t]he essence of his profession is the hands-on treatment of patients" (867 F.2d at 963), which he did only at the hospital.[5] The decision in the present case conflicts dramatically and irreconciliably with the decision in *Pomarantz*, and

[4] In most cases, the taxpayer will spend the greatest part of his time at the location where he performs his most important tasks, as is true in this case. In our view, the place where the taxpayer performs his most important, income-generating function, is his "principal place of business," even if he spends some greater part of his time elsewhere. The Second Circuit concluded in *Drucker*, however, that the most important aspect of a musician's business was the time he spent practicing and not the time he spent performing, and it concluded that home practice rooms maintained by members of the Metropolitan Opera orchestra were the musicians' principal places of business, rather than Lincoln Center, as the Tax Court had found. Similarly, in *Weissman* it rejected the Tax Court's conclusion that a salaried college professor was paid to teach, concluding instead that his important function was to publish scholarly materials, and that the home study where the professor spent most of his time was a more important place of business than his classroom. The approach taken by the Tax Court and the court of appeals below is nonetheless manifestly at odds with the comparative analysis the Second Circuit determined was necessary in *Drucker* and *Weissman*, as well as with the Seventh Circuit's approach in *Meiers*.

[5] The court of appeals majority did not even cite *Pomarantz*, much less attempt to distinguish the case, even though Judge Phillips pointed out in dissent (App., *infra*, 10a) that *Pomarantz* should be controlling in this case.

is also inconsistent with the foregoing decisions of the other courts of appeals.

5. The court of appeals erred in relying (App., *infra*, 5a-6a) on Section 1.280A-2(b)(3) of the Proposed Income Tax Regulations, 45 Fed. Reg. 52,399 (1980), as amended, 48 Fed. Reg. 33,320 (1983), which would allow traveling salesmen to deduct "home office" expenses if they spend substantial amounts of time doing paperwork at home. As the court of appeals itself noted (App., *infra*, 4a-5a), it is well settled that proposed regulations do not have any precedential force. *E.g.*, *Estate of Leavitt* v. *Commissioner*, 90 T.C. 206, 218 (1988), aff'd, 875 F.2d 420 (4th Cir.), cert. denied, 493 U.S. 958 (1989). In any event, the proposed regulation does not support the Fourth Circuit's decision. As pointed out by Judge Phillips in dissent, while traveling salesmen may spend more time on the road than they do in their home offices, they may spend more time working in their home offices than in any other single place (App., *infra*, 10a n.5). Respondent, however, spent the majority of his time at the three hospitals, spent more time at Suburban Hospital than he did at his home office, and his office "is not the base for his business in the same way that it would be for a salesperson" (*ibid.*)

6. The question presented in this case has substantial importance to the proper administration of the tax laws because it affects many thousands of individuals who perform some work at home but spend most of their time and perform their most important work elsewhere. The courts below have vastly expanded the class of taxpayers eligible to claim a dededuction for "home office" expenses. Under the panel's opinion, many taxpayers who perform incidental bus-

iness duties at home may now take the position on future returns—or on amended returns seeking the refund of taxes already paid—that they are entitled to write off the expenses of maintaining home offices even though they spend a greater part of their time and perform their most important duties elsewhere.[6] For this reason, the decisions of the Tax Court and of the court of appeals in this case have been the subject of widespread media attention. For example, the *New York Times* has quoted a tax advisor as "suggest[ing] that taxpayers with * * * home office[s] that * * * meet the new test * * * file amended tax returns for the three years allowed by the statu[t]e of limitations. *Id.* at F-17 (Mar. 11, 1990).

The decision of the court of appeals, if left intact, is thus apt to precipitate a large number of new claims for home office deductions. As Judge Phillips observed, the new standard adopted by the Tax Court and by the court of appeals "requir[es] courts to weigh so many factors that great uncertainty in the application of this critical tax concept is bound to result" (App., *infra*, 10a). In the absence of a decision from this Court resolving the conflict among the courts of appeals, the tax treatment of "home office" deductions will differ from region to region within the country, due solely to the federal circuit in which the taxpayer happens to reside. Resolution of this recurring issue is needed to avoid continuing

[6] For example, any teacher who lacks after-hours access to school facilities might argue that he is entitled to deduct the expenses of maintaining an area at home exclusively used for grading papers, or planning lessons, even though in terms of both time and importance the teaching profession is centered in the classroom and even though only minor incremental costs are incurred in maintaining an office at home.

uncertainty and restore even-handed application of the revenue laws.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

SHIRLEY D. PETERSON
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

KENT L. JONES
Assistant to the Solicitor General

RICHARD FARBER
TERESA E. MCLAUGHLIN
Attorneys

DECEMBER 1991

APPENDIX A

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

No. 90-1807

NADER E. SOLIMAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Argued Feb. 5, 1991

Decided June 5, 1991

Before PHILLIPS, Circuit Judge, CHAPMAN, Senior Circuit Judge, and WILLIAMS, District Judge for the Eastern District of Virginia, sitting by designation.

CHAPMAN, Senior Circuit Judge:

The Commissioner of Internal Revenue ("Commissioner") appeals the decision of the United States Tax Court in favor of plaintiff-appellee Nader E. Soliman ("Soliman"). This appeal presents the single issue [1] of how a taxpayer's "principal place of busi-

[1] The Commissioner also alleged that Soliman underreported his income by improperly deducting several "tax

ness" is established for the purpose of expenses for business use of an office in the home as a deduction for income tax determinations. The Tax Court concluded that Soliman's office in his residence was his principal place of business within the meaning of section 280A of the Internal Revenue Code, 26 U.S.C. § 280A, and that expenses attributable to the office were deductible. We affirm.

I.

Soliman, a self-employed anesthesiologist, operated his medical practice as a sole proprietor until September 1, 1983. Beginning on September 1, 1983, Soliman began operating his practice as a professional services corporation, Nader Soliman, M.D., P.C.

During 1983, Soliman worked as an anesthesiologist at three hospitals: Suburban Hospital in Bethesda, Maryland, Shady Grove Hospital in Rockville, Maryland, and Loudon Hospital in Leesburg, Virginia. He spent approximately thirty (30) to thirty-five (35) hours per week at the hospitals with the majority of such time at Suburban Hospital. None of the hospitals provided an office for Soliman.

Soliman lived in a three-bedroom apartment in McLean, Virginia. He used a spare bedroom as an office, which he furnished with a chair, desk, couch, telephone, answering machine, copier and filing cabinets. In the office he kept patient records, billing records, correspondence with patients, names of surgeons and insurance companies, medical journals, medical texts, collections agency records, and insur-

---

seminar" trips to the Virgin Islands and Orlando, Florida. The Tax Court held Soliman liable for these actions, and he did not appeal these findings.

ance code books. In addition to storing these records and materials, Soliman used his office to contact surgeons and patients, and also hospitals to arrange admission of his patients. He performed all of his record keeping in the office, maintaining detailed accounts of billing records and patient logs. He also used the office for reading medical journals to keep abreast of advances in anesthesiology and to prepare for specific patients. Soliman used the office to prepare for his monthly presentations to post-anesthesia care nurses at Suburban Hospital and to study the materials necessary to satisfy his own continuing medical education requirements. In all, Soliman spent two to three hours a day in his home office.

On his 1983 income tax return, Soliman claimed deductions of approximately $2,500 for expenses and depreciation for the home office. On audit, the Commissioner disallowed the deductions finding that they were precluded under section 280A, because his "home office" was not Soliman's "principal place of business" within the meaning of the statute. The tax court disagreed and found that Soliman's home office was his principal place of business.

II

The sole issued presented in this appeal is how a taxpayer's "principal place of business" is determined under Section 280A. Section 162(a) of the IRC (26 U.S.C. § 162(a)) allows a deduction for "all the ordinary and necessary expenses incurred during the taxable year in carrying on any trade or business . . . ." Before the enactment of section 280A, a taxpayer could abuse the section 162(a) deduction by deducting expenses incurred in the maintenance of a "home office," because the Code only required that the home office be "appropriate and helpful."

To close this "loophole," Congress enacted section 280A, which provides that no deduction is allowable "with respect to the use of a dwelling unit which is used by a taxpayer . . . as a residence." However, section 280A(c)(1) allows a home office deduction "to the extent that such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis" (1) as the "principal place of business for any trade or business of the taxpayer," (2) "as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business," or (3) in the case of a "separate structure . . . not attached to the dwelling unit, in connection with the taxpayer's trade or business."

Section 280A does not define "principal place of business," and the tax court formulated a judicial definition by adopting the "focal point" test to evaluate a taxpayer's "principal place of business." The "focal point" is the place where goods and services are provided to customers and revenues are generated. *Baie v. Commissioner*, 74 T.C. 105 (1980). Applying this test, the tax court concluded that Soliman's home could not be his "principal place of business," because the business activities performed at home were "ancillary to the primary income-generating services [Soliman] performed an as anesthesiologist at the hospitals."

Then the Tax Court found that the "focal point," test had been questioned in the past [2] and, it decided

[2] Three circuit court opinions have criticized the "focal point" test. *See Drucker v. Commissioner*, 715 F.2d 67 (2d Cir.1983); *Weissman v. Commissioner*, 751 F.2d 512 (2d Cir. 1984); and *Meiers v. Commissioner*, 782 F.2d 75 (7th Cir. 1986). In each case, the circuit court reversed the tax court's decision against the taxpayer on the taxpayer's claim of a part of his residence as his "principal place of business." Although the courts did not repudiate the "focal point" test, they recognized the potential injustice that the test could create.

to discard the "focal point" test. In its place, the tax court adopted the "facts and circumstances" test which provides that where management or administrative activities are essential to the taxpayer's trade or business and the only available office space is in the taxpayer's home, the "home office" can be his "principal place of business," with the existence of the following factors weighing heavily in favor of a finding that the taxpayer's "home office" is his "principal place of business:" (1) the office in the home is essential to the taxpayer's business; (2) he spends a substantial amount of time there; and (3) there is no other location available for performance of the office functions of the business. Applying this test, the tax court concluded that Soliman's "home office" was his "principal place of business" and that expenses of his office were deductible under section 280A(c)(1).

The Commissioner urges reversal, claiming that the tax court's new test renders section 280A meaningless. The Commissioner contends that the tax court's interpretation of section 280A creates a loophole that every taxpayer, who engages in work related activities at home, will abuse. We find the Commissioner's concern is unfounded.

The tax court's "facts and circumstances" test reflects the same policy that undergirds the IRS's proposed regulation allowing salespersons to deduct home office expenses. The regulation provides that salespersons can deduct expenses from a home office even though they spend most of their time on the road as

long as they spend "a substantial amount of time on paperwork at home." Proposed Income Tax Reg. § 1.280A-2(b)(3), 45 Fed.Reg. 52,399 (Aug. 7, 1980), as amended, 48 Fed.Reg. 33,320 (July 21, 1983).[3] The tax court found that the proposed regulation represented the spirit of section 280A and justified adopting the new test. While it is true that the proposed regulation was not binding on the tax court or this court, the regulation does evince a policy to allow "home office" deductions for taxpayers who maintain "legitimate" home offices, even if the taxpayer does not spend a majority of his time in the office.

We find that the tax court's new "facts and circumstances" test does not eviscerate the requirements of section 280A,[4] but simply replaces the inflexible and potentially unjust "focal point" test. Under the new test, a taxpayer's "principal place of business" will not be determined by only considering which location generates income or client contact, but which location is the true headquarters of the business, as determined by the factors enumerated by the tax court. This test more accurately reflects the purposes and requirements of section 280A, and we affirm it as the law of this circuit.

---

[3] Although the regulation was initially proposed in 1980, it is still awaiting final approval by the Commissioner. Under the Commissioner's regulation promulgation procedures, a proposed regulation can lay dormant indefinitely until the Commissioner either withdraws the proposal or adopts a final draft of a proposal as a regulation.

[4] We note that the new test has been applied in four recent cases, and in at least one of these cases, the court has found against the taxpayer. *See In re James R. Shore*, T.C. Memo 1990272, ¶ 90,272 P-H Memo TC (finding against the taxpayer).

III.

For the above reasons, the decision of the tax court is

AFFIRMED.

PHILLIPS, Circuit Judge, dissenting:

The majority affirms the Tax Court's adoption and application of its new "facts and circumstances" test for determining a taxpayer's principal place of business under Internal Revenue Code § 280A. Because I believe the "facts and circumstances" test misconstrues the meaning of § 280A, I respectfully dissent.

Section 280A opens with the "general rule" that "no deduction . . . shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence." 26 U.S.C. § 280A(a). Section 280A(c), however, provides several exceptions to that general rule for certain kinds of "business use." Critical here is the exception that allows deduction to the extent that any portion of a dwelling unit is "used on a regular basis [as] *the* principal place of business for any trade or business of the taxpayer." 26 U.S.C. § 280A(c)(1)(A) (emphasis added). The issue here is narrowly and simply whether Soliman's home office use came within this "principal place of business" exception.

Adopting the Tax Court's new "facts and circumstances" test as the law of this circuit, the majority concludes that a home office can be a taxpayer's "principal place of business" if "management or administrative activities are essential to the taxpayer's trade or business and the only available office space is in the taxpayer's home." At 54. Because Soliman's home office was essential to his business, he spent a

substantial amount of time there, and there was no other location where he could perform the office functions of his business, the Tax Court found and the majority agrees that Soliman's home office was his "principal place of business."

I disagree with this approach. Under the plain language of § 280A(c)(1)(A), a taxpayer can only have one "principal place of business." *See Pomarantz v. Commissioner*, 867 F.2d 495, 496 (9th Cir.1988). Section 280A does not in terms allow a taxpayer to deduct home office expenses any time those expenses are essential to his business. As the dissenting judges in the Tax Court's decision point out, the "facts and circumstances" test eliminates any need for comparing a taxpayer's use of several business locations to determine which constituted his "principal place of business." *See Soliman v. Commissioner*, 94 T.C. 20, 33, 35 (1990) (Nims, J., dissenting) and (Ruwe, J., dissenting). They thought, and I agree, that the term "principal place of business" compels an inquiry directed to that specific question—which is the *one* that is "principal." Otherwise Congress could have used language such as "essential place of business" or "necessary place of business."

All three of the cases relied on by the majority in which circuit courts have concluded that a taxpayer's home office was his "principal place of business" are distinguishable from Soliman's case. Unlike this case, they involve situations where the taxpayer spent the majority of his time in his home office, or did his most important work there, or both. *See Meiers v. Commissioner*, 782 F.2d 75, 79 (7th Cir.1986) (taxpayer "spent most of her time in the home office and performed what may be her most important functions as a manager there"); *Weissman v. Commissioner*, 751 F.2d 512, 516 (2d Cir.1984) (taxpayer

spent 80% of his work time in his home office); and *Drucker v. Commissioner*, 715 F.2d 67, 69 (2d Cir. 1983) ("[b]oth in time and in importance, home practice was the 'focal point' of. the appellant musicians' employment-related activities."). In each of these decisions, the circuit court compared business locations to see which one qualified as the principal place of business. As the dissenting Tax Court judges in this case both recognized, those decisions actually provide more proper tests for locating the principal place of business than does the amorphous "facts and circumstances" test. Chief Judge Nims proposed a "time and importance" modification of the "focal point" test. Under it the courts would continue to apply the "focal point" test—which defines the "focal point" as the place where the taxpayer provides goods and services and generates revenue—except "in the rare situation where in time and importance the home office itself became the focal point of the taxpayer's activities." *Soliman v. Commissioner*, 94 T.C. 20, 32 (1990) (Nims, J., dissenting). Judge Ruwe suggested a test under which a taxpayer's principal place of business would be "the place where the dominant portion of the taxpayer's work is accomplished." *Id.* at 41 (Ruwe, J., dissenting). With those dissenting judges, I believe that either of these tests is more consistent with the meaning of § 280A(c)(1)(A) than is the Tax Court's new, more open-ended one.

It is undisputed that Soliman does not spend the majority of his time at his home office. He also does not do his most important work—treating patients—at his home office. Although Soliman's home office work is essential to his business, this should not mandate a finding that the home office is his principal place of business. In a quite similar case, the Ninth Circuit recently concluded that an emergency care

physician's home office was not his "principal place of business" under § 280A. *See Pomarantz v. Commissioner*, 867 F.2d 495 (9th Cir.1988). The Ninth Circuit ruled that Pomarantz could not deduct home office expenses because

> he consistently spent more time on duty at the hospital rather than at home. The essence of his profession is the hands-on treatment of patients which he did only at the hospital and never at home. Finally, he generated income only by seeing patients at the hospital not study or writing at home.

Id. at 497-98. I would apply this very reasoning to find that Soliman's home office was not his principal place of business.

In sum, I would not adopt the "facts and circumstances" test as the law of of this circuit. It avoids what I think a fair application of § 280A(c)(1)(A) flatly compels: a comparison of the uses of multiple business locations to determine which is *the* principal place of business of a taxpayer. It does so by requiring courts to weigh so many factors that great uncertainty in the application of this critical tax concept is bound to result. Cf. *Cadwallader v. Commissioner*, 919 F.2d 1273, 1275 (7th Cir.1990) (noting "vagaries" of the " 'all relevant factors' laundry list" used by the Tax Court in *Soliman*). Because Soliman spends the majority of his time and does his most important work away from his home office, I would reverse.[5]

---

[5] The majority cites Proposed Income Tax Reg. § 1.280A-2(b)(3), 45 Fed.Reg. 52399 (Aug. 7, 1980), as amended, 48 Fed.Reg. 33320 (July 21, 1983), in support of its decision. As the majority recognizes, this proposed regulation is not binding precedent on the Tax Court or this court. Moreover, the proposed example the majority cites from the regulation specifically applies to "outside salesperson[s]" who do not spend any large portion of their time in one particular location. Although these salespersons spend more time on the road than in their home offices, they may spend more time at their home offices than in any one particular place that they sell goods. Soliman, in addition to spending the majority of his time at the hospital, spent more time at one of the three hospitals, Suburban Hospital, than he spent at his home office. Thus, his home office is not the base for his business in the same way that it would be for a salesperson.

APPENDIX B

94 T. C. No. 3

UNITED STATES TAX COURT

Docket No. 35698-87

NADER E. SOLIMAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Filed January 18, 1990

P used a room in his apartment exclusively to manage his medical practice. He had no other office space available to him. His business activities at his home office were essential to his medical practice but were ancillary to the primary income-generating services he performed at hospitals.

Held, P is entitled to deduct expenses for his home office. We will no longer follow the "focal point" test of *Drucker v. Commissioner*, 79 T.C. 605 (1982), revd. 715 F.2d 67 (2d Cir. 1983) in cases in which a taxpayer's home office is essential to his business, he spends substantial time there, and there is no other location available to perform the office functions of the business. *Held further*, other deductions disallowed. *Held further*, P is liable for additions to tax.

David M. Sokolow, for the petitioner.

Karen E. Chandler, for the respondent.

WILLIAMS, *Judge*: The Commissioner determined a deficiency in petitioner's 1983 Federal income tax as follows:

	Deficiency	section 6651(a)(1)[1]	section 6653(a)(1)	section 6653(a)(2)	section 6661
1983	$20,338	$1,089	$2,538	*	$3,864

* 50% of the interest due on the underpayment.

The issues we must decide are: (1) whether petitioner is entitled to a home office deduction pursuant to section 280A, (2) whether petitioner is entitled to a business expense deduction for the use of his automobile, (3) whether petitioner is entitled to a deduction for expenses incurred in traveling to the Virgin Islands and Orlando, Florida, and (4) whether petitioner is liable for additions to tax as determined by respondent. Petitioner conceded the section 6651(a)(1) addition to tax prior to trial.

FINDINGS OF FACT

Some of the facts in this case have been stipulated and are so found. Petitioner resided in McLean, Virginia at the time the petition was filed in this case. Petitioner, a self-employed anesthesiologist, was a sole proprietor until September 1, 1983. He incorporated Nader Soliman, M.D., P.C., on August 6, 1983, which began its first fiscal year on September 1, 1983.

During 1983 petitioner worked as an anesthesiologist at Suburban Hospital, in Bethesda, Maryland, Shady Grove Hospital in Rockville, Maryland, and Loudoun Memorial Hospital in Leesburg, Virginia. Petitioner earned income in 1983 by administering anesthesia to patients before surgery, caring for patients immediately after surgery, and treating patients for pain. Petitioner performed all of these

---

[1] All section references are to the Internal Revenue Code of 1954 as in effect for the year in issue, unless otherwise indicated.

services in the hospitals where he was on staff. Petitioner spent 30 to 35 hours per week at the hospitals. He spent approximately 80 percent of that time at Suburban Hospital, and he spent most of the remaining time at Loudoun Memorial Hospital. Petitioner was not provided an office at any of the three hospitals.

During 1983 petitioner lived in a three-bedroom apartment in McLean, Virginia. He used one bedroom as an office where he kept the following: chair, desk, couch, telephone, answering machine, copier, filing cabinet, patient records, billing records, correspondence with patients, names of surgeons and insurance companies, medical journals, medical texts, collection agency records, and insurance code books. In his office petitioner contacted surgeons and patients by telephone, contacted hospitals to arrange admission for his own patients, maintained detailed billing records and patient logs, transmitted this information to a billing service, recorded collected payments on the patient logs, read medical books and journals, and prepared for specific patients. Petitioner also satisfied his continuing medical education requirements and prepared for his monthly presentations to post-anesthesia care nurses at Suburban Hospital in his office at home. Petitioner spent an average of 2 to 3 hours a day working in his home office but never treated patients there. Petitioner's only "personal" use of his home office was to balance his checkbook which combined his business and personal affairs.

Petitioner deducted on Schedule C of his 1983 Federal income tax return home office expenses and depreciation in the amount of $841 for the first 8 months of 1983. Petitioner claimed Schedule E home office deductions for expenses and depreciation in the

amount of $418 for the last months of 1983. Respondent disallowed petitioner's home office deduction.

During 1983 petitioner owned two automobiles, a Buick and a Honda. Petitioner drove the Buick exclusively on trips between his home office and the hospitals, between the hospital, and between the hospitals and hotels where he stayed when he was on call. In 1983, petitioner drove his Buick a little over 10,000 miles. Petitioner incurred and claimed on his 1983 Federal income tax return automobile expenses in driving his Buick between hospitals and between his home office and hospitals of $1,014 during the first 8 months of 1983, and $508 during the last 4 months of 1983. Petitioner also claimed a depreciation deduction for his Buick of $2,236. Respondent disallowed petitioner's depreciation and automobile expense deduction.

In June of 1983, petitioner and his wife attended a seminar in the U.S. Virgin Islands emphasizing tax-saving techniques and tax shelters. Petitioner's 3-year old son accompanied them on their trip. Petitioner attended the seminar from June 26 to June 29, 1983. Time spent at the seminar included picking up registration materials the first day, approximately 15 hours of seminars over the next 3 days and a free consultation. Petitioner left the Virgin Islands on July 4, 1983, after spending 10 days there. On his 1983 Federal Income tax return petitioner deducted his wife's and his round-trip airfare to the Virgin Islands and their hotel and meal expenses on days when petitioner had any contact with the seminar as follows: seminar fee—$498; meals—$376; airfare—$1,158; hotel—$394.

On August 19, 1983, petitioner, his wife, and 3-year old son flew from Washington, D.C. to Orlando,

Florida for an additional tax and financial planning consultation. As a result, petitioner was sent an investment proposal. Petitioner was advised by his accountant, however, that the investment was a sham tax shelter. Consequently, petitioner did not invest in the tax shelter. Petitioner claimed as a deduction on his 1983 Federal income tax return the expenses of his trip to Orlando, Florida as follows: consultation fee—$1,250.00; hotel—$60.46; airfare—$554.00. Petitioner's trips to the Virgin Islands and Orlando, Florida during 1983 were primarily for personal reasons.

In the Statutory Notice of Deficiency, respondent determined that petitioner had understated his gross receipts on his U.S. Individual Income Tax Return in the amount of $31,219. One thousand three hundred and sixty-two dollars of the unreported gross receipts were amounts collected and subsequently refunded to insurance providers which respondent concedes are not taxable. Seventeen thousand four hundred and twenty-five dollars of the unreported gross receipts are amounts paid prior to September 1983 for services provided by petitioner which were not reported on his U.S. Individual Income Tax Return or on the U.S. Corporate Income Tax Return of Nader Soliman, M.D., P.C. Twelve thousand four hundred and thirty-two dollars of the unreported gross receipts represents amounts collected prior to September 1983 for services provided by petitioner which should have been reported on his U.S. Individual Income Tax return but were, instead, reported on the U.S. Corporation Income Tax Return of Nader Soliman, M.D., P.C. Petitioner has conceded the taxability of $29,857 of the gross receipts.

OPINION

The first issue we must decide is whether petitioner is entitled to a deduction for his home office pursuant to section 280A. Section 280A provides generally that expenses in connection with the use of a taxpayer's residence are not deductible. An exception to the general rule, section 280A(c)(1)(A), permits the deduction of home office expenses if a portion of the home is "exclusively used on a regular basis" as the principal place of business for any trade or business of the taxpayer. An employee must also show that the office is maintained "for the convenience of his employer." Sec. 280A(c)(1). Petitioner argues that as a practicing anesthesiologist without any other office, his home office was his principal place of business.

Prior to the enactment of section 280A, we allowed a deduction for an "ordinary and necessary" home office expense pursuant to section 162(a) if the expense was "appropriate and helpful." See, e.g., *Newi v. Commissioner*, 432 F.2d 998, 1000 (2d Cir. 1970), affg. a Memorandum Opinion of this Court. Congress curtailed this liberal allowance of home office expense deductions by enacting section 280A. See *Green v. Commissioner*, 707 F.2d 404, 407 (9th Cir. 1983), revg. 78 T.C. 428 (1982). Congress intended to prevent a deduction for essentially personal expenses and allow a deduction only for business use of residences. S. Rept. 94-938 (1976), 1976-3 C.B. (Vol. 3) 49, 185; see *Drucker v. Commissioner*, 715 F.2d 67, 69 (2d Cir. 1983), revg. 79 T.C. 605 (1982).

We believe, and respondent does not seriously contend otherwise, that petitioner used one room in the apartment exclusively on a regular basis in his business. The issue, therefore, is whether the home office was petitioner's principal place of business. We have

applied the "focal point" test to identify the taxpayer's principal place of business. *Baie v. Commissioner*, 74 T.C. 105 (1980). The "focal point" of the taxpayer's activities, and thus his principal place of business, is the place where goods and services are provided to customers and revenues are generated. *Drucker v. Commissioner*, 79 T.C. at 613-614; *Baie v. Commissioner*, *supra* at 109.

We have consistently followed *Baie* and the "focal point" test. See, e.g., *Drucker v. Commissioner*, 79 T.C. at 612; *Green v. Commissioner*, 78 T.C. at 433; *Jackson v. Commissioner*, 76 T.C. 696, 700 (1981). Courts of Appeals, however, have questioned our test. See *Meiers v. Commissioner*, 782 F.2d 75 (7th Cir. 1986), revg. a Memorandum Opinion of this Court; *Weissman v. Commissioner*, 751 F.2d 512 (2d Cir. 1984), revg. a Memorandum Opinion of this Court; *Drucker v. Commissioner*, 715 F.2d 67 (2d Cir. 1983), revg. 79 T.C. 605 (1982). In light of this response, we believe we need to revisit the "focal point" test and our interpretation of section 280A for cases in which administration of the taxpayer's business is essential and the only available office space is in the taxpayer's home.

The "focal point" test looks only to the place where services are performed and income is generated. Under this test, petitioner's home office is not the "focal point" of his business. His business activities at the house were essential to his medical practice but were ancillary to the primary income-generating services petitioner performed as an anesthesiologist at the hospitals. We believe, however, that where a taxpayer's occupation requires essential organizational and management activities that are distinct

from those that generate income, the place where the business is managed can be the principal place of business.

Congress provided exceptions to the restrictions of section 280A by allowing deductions for a home office if either the home office is the taxpayer's principal place of business, section 280A(c)(1)(A), or it is used for meeting with the taxpayer's patients, clients, or customers in the taxpayer's business, section 280A(c)(1)(B). Goods and services could be transferred to customers and clients in the taxpayer's home, the "focal point," only if the taxpayer meets clients or customers in his home. The "focal point" test, therefore, merges the "principal place of business" exception with the "meeting clients" exception and practically eliminates the principal place of business exception from section 280A. See *Drucker v. Commissioner*, 79 T.C. at 623 (Wilbur, J., dissenting). If the "principal place of business" exception has meaning independent of the exception for home offices used to meet clients or patients then the "focal point" test should give way to an analysis of all the facts and circumstances.

The determination of "principal place of business" necessarily depends on the facts and circumstances of each case. A principal place of business is not necessarily where goods and services are transferred to clients or customers but is frequently the administrative headquarters of a business. Furthermore, where no other suitable office is provided for essential organizational activities of a business, the fact that goods or services are delivered elsewhere should not per se require a conclusion that a home office is other than the principal place of business. The inquiry is ap-

propriately into the surrounding facts and circumstances. See *Weissman v. Commissioner, supra.*

The time spent in the home office is one of several important factors to consider, but it is not necessarily the predominant factor. See *Meiers v. Commissioner*, 782 F.2d at 79. This is an especially important point for a business such as petitioner's that, to be successful, has different activities, one that is typically suited to office work and one that is not. Petitioner's business required him to perform two very different functions: (1) to render medical services at hospitals, and (2) to care for administrative chores, e.g., record keeping, gathering of billing information and payments, continuing medical education. Both functions were equally essential to a successful medical practice; the second required an office while the first did not. Petitioner's business required him to devote substantial time to office chores, and, although he spent more hours at the hospitals, we believe that comparing the number of hours spent at each location is a misleading comparison because the activities are so different from each other. Such a comparison can be meaningful if the activities in the home office are similar to the activities at another place of business. E.g., *Drucker v. Commissioner, supra.* We believe *Weissman v. Commissioner, supra* at 514, is instructive on this point. In *Weissman* a professor had two offices: one in his home and one on campus. In deciding that his home office was his principal place of business, the Court of Appeals compared the number of hours that he spent at the home office to the number of hours he spent at the campus office. Based on time spent at his home office, the Court of Appeals permitted him deductions for maintaining his home office because it was the most important office for his business. Because the taxpayer had more than one office, the time spent at each office became the deciding factor. If such a comparison were the determining standard, however, it would preclude the deduction approved of by the Secretary in his proposed regulations. Sec. 1.280A-2(b)(3), Proposed Income Tax Reg., 45 Fed. Reg. 52399 (Aug. 7, 1980), as amended 48 Fed. Reg. 33320 (July 21, 1983). The proposed regulations recognize that "if an outside salesperson has no office space except at home and spends a substantial amount of time on paperwork at home, the office in the home may qualify as the salesperson's principal place of business." The proposed regulations do not require more time to be spent in the home office than on the road. Any successful outside salesperson is not going to spend more time in his office than outside selling. The proposed standard is spending "a substantial amount of time on paperwork at home." We agree with this standard if the taxpayer has no other available facility to accomplish the administrative chores of his business.

In *Pomarantz v. Commissioner*, 847 F.2d 495 (9th Cir. 1988), affg. T.C. Memo. 1986-461, the Court of Appeals sustained our decision disallowing a deduction for home office expenses on facts superficially similar to those in the present case. The taxpayer in *Pomarantz* was an emergency room physician who provided his services to a hospital as an independent contractor. The hospital did not provide him with office space, and he used a room in his home exclusively as an office. Reasoning that the taxpayer spent more hours and performed more important activities at the hospital, we held that under any standard, the taxpayer's home office was not his principal place of business. T.C. Memo. 1986-461. Deferring to this

Court under a clearly erroneous standard, 867 F.2d at 497, the Ninth Circuit affirmed our holding that under either the focal point test or the facts and circumstances test, the hospital was the taxpayer's principal place of business. We reach a different conclusion in this case because the taxpayer in *Pomarantz* spent an insubstantial amount of time in his home office. By contrast, in this case, petitioner's practice required that he spend a substantial amount of his time, over 30 percent, working in his home office. In weighing the factors in this case, we believe that this difference is significant and requires a different conclusion about petitioner's principal place of business.

Some other important factors that must be considered are the business exigencies for having a home office, whether the functions performed in the home office are essential to the conduct of business, whether the office is suitable for the essential business functions performed there, and the appropriateness of the furnishings. While proposed regulations have no force or effect, they do state a considered position by respondent. We note again that respondent's considered position is in accord with this view.

In this case, the activities petitioner performed in his home office, viz, bookkeeping, billing, preparation for patients, and continuing medical education, were distinct from those he performed at the hospital. He maintained patient records, billed patients, collected and recorded payments, and reviewed medical procedures. These activities were essential to petitioner's work. In order to carry on his business as an anesthesiologist, it was essential for petitioner to keep abreast of the latest technology, to bill his patients, and to maintain his state certification as an anesthesiologist.

The hospitals did not provide petitioner with office space. Petitioner's case is distinguishable from cases, therefore, where a taxpayer's employer provided adequate office space outside the home. See *Sharon v. Commissioner*, 66 T.C. 515, 525 (1976), affd. per curiam 591 F.2d 1273 (9th Cir. 1978). Petitioner managed and coordinated his anethesiology work in his home office. He spent approximately 30 percent of his time in his home office. In addition to spending substantial time there, petitioner's use of the home office was important to a successful medical practice. In this case, however, petitioner had no place to manage his medical practice other than in his home. Compare *Weissman v. Commissioner, supra.*

Balancing the factors, we believe that the lack of any other office weighs significantly in petitioner's favor. Because administrative functions must be performed, we cannot simply tote up the number of hours he spent at his office and at the hospital and on the basis of where he spent more time conclude that was his principal place of business. His time in the office was substantial, and because his office activities were distinct from his medical activities at the hospital and were essential to a successful practice, we weigh more heavily in our consideration the lack of alternative office space than a mechanical comparison of the number of hours spent there.

Petitioner's practice as an anesthesiologist, in effect, was headquartered in his home office. Section 280A was not enacted to compel a taxpayer to rent office space rather than work out of his own home. See *Meiers v. Commissioner*, 782 F.2d at 79. We believe that Congress intended to allow a deduction for this type of home office expense when it enacted section 280A. We hold that petitioner's home office was his

principal place of business, and we will no longer follow our opinion in *Drucker v. Commissioner*, *supra*, in cases in which a taxpayer's home office is essential to his business, he spends substantial time there, and there is no other location available to perform the office functions of the business.[2]

For the last 4 months of 1983, after petitioner incorporated, he must also show that he maintained the home "for the convenience of his employer." Sec. 280A(c)(1). Petitioner had no other office space available, his business activities there remained unchanged and were essential to his professional corporation's business. Maintaining the home office was a business necessity, and, therefore, was "for the convenience of his employer." See *Drucker v. Commissioner*, 715 F.2d at 70.

The next issue we must decide is whether petitioner may claim a deduction for expenses and depreciation arising from the use of his automobile. Petitioner claimed a deduction for all expenses and depreciation based on total business usage of his Buick. The parties agreed that petitioner is entitled to deduct $1,522 in expenses and $2,236 of depreciation if we hold that his home office is his principal place of business. Because we have held that petitioner's home office is his principal place of business, petitioner may deduct the expenses and depreciation.

We must next determine whether petitioner may deduct expenses in attending a seminar in the U.S. Virgin Islands and a consultation in Orlando, Florida. Petitioner argues that he is entitled to a deduction for these expenses pursuant to section 212.

[2] The parties do not discuss the restrictions of section 280A(c)(5), and we assume they agree that the restrictions have no effect on the amounts petitioner may deduct for his home office.

Section 212 provides for the deduction of all ordinary and necessary expenses incurred for the production or collection of income or for the management, conservation, or maintainence of property held for the production of income, or in connection with the determination, collection or refund of any tax. To be deductible pursuant to section 212, expenses must be reasonable in amount and "must bear a reasonable and proximate relation to the production or collection of taxable income or to the management, conservation, or maintenance of properties held for the production of income." Sec. 1.212-1(d), Income Tax Regs. Petitioner points to his purchase of life insurance and the incorporation of his practice as results of his trips to the Virgin Islands and Orlando, Florida. It remains unclear, however, how the trips bear any reasonable relationship to petitioner's need for advice on financial planning. Judging from the evidence before us, we believe that petitioner's trips were predominantly personal family vacations. Consequently, we hold that those expenses are not deductible.

The next issue we must decide is whether petitioner is liable for additions to tax pursuant to sections 6653(a)(1) and (a)(2). Section 6653(a)(1) provides that if any part of any underpayment of tax is due to negligence or intentional disregard of rules or regulations, there shall be added to the tax an amount equal to five percent of the underpayment. Section 6653(a)(2) provides for an additional negligence addition in an amount equal to 50 percent of the interest payable on the portion of the underpayment that is attributable to negligence. For purposes of section 6653(a), negligence is defined as lack

of due care or failure to do what a reasonable and prudent person would do under the circumstances. *Neely v. Commissioner*, 85 T.C. 934, 947 (1985). Petitioners have the burden of proof on this issue. Rule 142(a), Tax Court Rules of Practice and Procedure.

Petitioner failed to report $29,857 of his taxable income, $12,432 of which was reported on petitioner's corporation's return and $17,425 of which was completely omitted. Petitioner kept books and records and consulted his accountant on tax matters. We believe that his careless omission of this income from his Federal income tax was due to negligence. It does not appear, however, that any other portion of petitioner's underpayment is due to negligence. Petitioner claimed deductions that were well-grounded in fact and supportable under the law. While we have sustained part of respondent's disallowance, petitioner's taking the deductions was not negligent.

Finally, we must determine if petitioner is liable for an addition to tax pursuant to section 6661. Section 6661 provides for an addition to tax of 25 percent of the amount of underpayment of tax attributable to a "substantial understatement of income tax." A substantial understatement of tax exists if the taxpayer, without substantial authority or adequate disclosure of facts, has understated his tax liability by the greater of $5,000 or 10 percent of the tax required to be shown on the return. Sec. 6661(b)(1)(A). The understatement is reduced by so much of it as is based on a position supported by substantial authority or is attributable to facts adequately disclosed on the return. Sec. 6661(b)(2)(B).

It appears that there is or was substantial authority or adequate disclosure of all matters in dispute except for petitioner's unreported income of $29,857.

Petitioner's return shows a tax liability of $30,413. The tax required to be shown on the return is yet to be computed, but it would appear to be approximately $45,000. Petitioner is, therefore, liable for the addition on his understatement of income tax that is attributable to his unreported income because this understatement appears to exceed the greater of $5,000 or 10 percent of the tax required to be shown on his return.

Decision will be entered pursuant to Rule 185.

Reviewed by the Court.

KÖRNER, HAMBLEN, COHEN, SWIFT, JACOBS, GERBER, WRIGHT, WELLS, WHALEN, and COLVIN, *JJ.*, agree with the majority opinion.

NIMS, *C.J.*, dissenting: With deference to the judgment of a majority of my colleagues, I am unable to detect any reliable basis for determining a taxpayer's principal place of business in the absence of applying the focal point test (modified as discussed below) first enunciated in *Baie v. Commissioner*, 74 T.C. 105 (1980), and thereafter consisistently applied by this Court. In that case we said the following: "We therefore take it that what Congress had in mind [as to a taxpayer's "principal place of business"] was the focal point of a taxpayer's activities * * *." 74 T.C. at 109.

To paraphrase a statement by Judge Ruwe in his companion dissenting opinion, the appellate court opinions in the three cases in which this Court has been reversed for having inappropriately applied the focal point test make it apparent that the single most important factor relied upon by these Courts of Appeals was that the taxpayer spent the majority of his or her business time at the "home office," rather than at the place where goods or services were provided to customers or clients or where income is produced. To that I would simply add that the Courts of Appeals also stressed the importance of the work performed at home. See *Meiers v. Commissioner*, 782 F.2d 75, 78 (7th Cir. 1986), revg. T.C. Memo. 1982-51; see also *Drucker v. Commissioner*, 715 F.2d 67 (2d Cir. 1983), revg. 79 T.C. 605 (1982); and *Weissman v. Commissioners*, 751 F.2d 512 (2d Cir. 1984), revg. T.C. Memo. 1983-724.

It seems to me that each of the above cases involved the *Drucker* case's "rare situation" where, on the unusual facts presented, the taxpayer's principal place of business was not that of his employer because, in time and importance, the office in the home was the

true focal point, and therefore the principal place, of the taxpayer's business. See *Drucker v. Commissioner*, 715 F.2d at 69. Thus, in order to maintain a reference point from which to determine the principal place of business, I would preserve the focal point test, modified to the extent necessary in the rare situation where in time and importance the home office itself became the focal point of the taxpayer's activities.

The majority holds that to make the determination of principal place of business "the inquiry is appropriately into the surrounding facts and circumstances." (Majority op. p.10.) But as we stated in *Baie v. Commissioner*, 74 T.C. at 108, "*Prior to the enactment of section 280A*, this Court had allowed a deduction for an office in an employee's residence on the grounds that the maintenance of such office was 'appropriate and helpful' *under the circumstances.*" (Emphasis supplied.) Thus, the reintroduction of a facts and circumstances inquiry takes us all the way back to square one; i.e., to the situation which existed even before Congress took what it thought would be the remedial action of section 280A.

The focal point test has been our response to the Congress' use of the word "principal" in the statutory phrase "principal place of business." At the least, the statutory phrase requires us to compare the putative principal place with other places that might be principal places and, using some standard, determine whether the putative principal place ranks higher than the other places. The majority's approach does not seek to make such a comparison. The majority seems to examine into the importance of petitioner's office in the home, but do not examine whether that importance is greater than the importance of, say,

the hospital facilities in which petitioner delivers his anesthesiology services. As Judge Ruwe points out, the majority does not even examine into whether petitioner spent more time in his office in the home than in the hospital facilities. In effect, the majority has substituted the phrase "important place of business" for the phrase that the Congress enacted.

Since on the facts it is indisputable that Dr. Soliman's activities do not meet the unglossed focal point test, nor do they appear to meet the "time and importance" modification of the focal point test introduced by the Court of Appeals cases, I would hold for respondent on the principal place of business issue.

CHABOT, PARKER, CLAPP, and PARR, *JJ.*, agree with this dissent.

RUWE, *J.*, dissenting: I respectfully disagree with the majority's conclusion that petitioner is entitled to a home office deduction under section 280A.

Section 280A generally denies deductions related to a home office unless certain conditions are met. The condition in question in this case is whether petitioner's home office was his "principal place of business" within the meaning of section 280A(c)(1)(A). It is clear that a taxpayer can have only one principal place of business for each business in which he is engaged. *Pomarantz v. Commissioner*, 867 F.2d 495, 496 (9th Cir. 1988), affg. T. C. Memo. 1986-461; *Drucker v. Commissioner*, 79 T.C. 605, 612 (1982), revd. on other grounds 715 F.2d 67 (2d Cir. 1983).

The majority ostensibly overrules the "focal point" test for determining a taxpayer's principal place of business. It does so on the basis of cases decided by the Second and Seventh Circuit Courts of Appeals which reversed opinions of this Court. I agree that the "focal point" test, as previously applied by this Court, can place undue emphasis on where the taxpayer's activities are most visible, where he physically meets and deals with customers, and where goods and services are ultimately exchanged for income.[1] Nevertheless, when a taxpayer has two or more places of conducting business it is incumbent upon us to specify a standard which can be applied in determining which is the principal place of business.

The circuit courts that have rejected the "focal point" test have held that a taxpayer's principal place

---

[1] In many cases the "focal point" test will produce the same result as the other test which has been used by the Courts of Appeals. See *Pomarantz v. Commissioner*, 867 F.2d 495 (9th Cir. 1988), affg. T. C. Memo. 1986-461.

of business for purposes of section 280A is "the place where the dominant portion of his work is accomplished." *Weissman v. Commissioner*, 751 F.2d 512, 514 (2d Cir. 1984), revg. a Memorandum Opinion of this Court; *Meiers v. Commissioner*, 782 F.2d 75, 78-79 (7th Cir. 1986), revg. a Memorandum Opinion of this Court. I agree that this is the appropriate test. The majority, however, does not adopt this test. In fact, nowhere in the majority opinion is this test even mentioned.

The majority opinion sets forth various factors to be considered in making its determination. However, the majority fails to use these factors to *compare* petitioner's several places of business in order to determine where "the dominant portion of his work is accomplished." Instead, the majority simply concludes that when "a taxpayer's home office is essential to his business, he spends substantial time there, and there is no other location available to perform the office functions of the business" (majority op. p.16), then the home office is the principal place of business. The majority eliminates the need to compare the importance of home office activities with the importance of activities at the other place of business or to compare the amount of time spent at the home office with the amount of time spent at the other place of business. Indeed, the majority eliminates the need to determine where "the dominant portion of [the taxpayer's] work is accomplished." In doing so, the majority takes the highly unusual step of overruling precedent in this Court on the basis of appellate court opinions and then disregarding the test articulated in those same appellate court opinions.

In the three appellate court opinions in which this Court has been reversed for having applied a "focal

point" test, it is obvious that a major factor relied upon by the circuit courts was the amount of time that the taxpayer spent at his various places of business. In *Drucker v. Commissioner*, *supra*, there was a factual finding that the taxpayer-musician spent the majority of his working hours in his home studio. In *Weissman v. Commissioner*, *supra*, it was found that the college professor spent 80 percent of the time devoted to his business in his home office. Finally, in *Meiers* v. *Commissioner*, *supra*, the taxpayer spent two-thirds of her business time in her home office. In *Meiers*, we held that the time spent at various business locations was not controlling, but instead, focused on the place where goods and services were provided to customers. *Meiers v. Commissioner*, T. C. Memo. 1984-607. In commenting on this, the Seventh Circuit stated that "we think a major consideration ought to be the length of time the taxpayer spends in the home office as opposed to other locations." *Meiers v. Commissioner*, 782 F.2d at 79. The facts clearly show that in the instant case petitioner did not spend most of his business time at his home office.: Instead, petitioner devoted most of his business time to practicing medicine at Suburban Hospital.

The majority acknowledges that in *Weissman v. Commissioner*, *supra*, the Second Circuit considered the amount of time spent at the home office *compared* with the amount of time spent on campus [2] to be the

[2] The majority incorrectly says that the comparison was between the hours "spent at the home office" as opposed "to the number of hours * * * spent at the *campus office*." (Majority op. p. 11. Emphasis added.) The facts show that Professor Weissman spent very little of his campus time at the campus office. Both this Court and the Second Circuit compared home office time with *total* time spent on campus in-

deciding factor (majority op. pp. 11 and 12). The majority states that "Such a comparison can be meaningful if the activities in the home office are similar to the activities at another place of business. * * *" (Majority op. p. 11.) The majority infers that Professor Weissman's campus activities were similar to those at his home office. The activities performed by Professor Weissman on campus and at his home office were not similar. The heart of the context in *Weissman v. Commissioner*, *supra*, both in our opinion and in that of the Second Circuit, was that the taxpayer's campus activities, including those at his campus office, were exclusively concerned with Professor Weissman's classroom work ("where he taught, met with students, graded examinations, and prepared lectures. * * *" *Weissman v. Commissioner*, 751 F.2d at 514), whereas his home office activities were exclusively related to research and writing. The Second Circuit's only disagreement with our opinion was with respect to the relative importance of the *different* types of activities conducted on campus and at home. That is obviously why the court criticized our "focal point" test for placing undue emphasis on classroom activities. *Weissman v. Commissioner*, 751 F.2d at 514.[3]

---

cluding classroom time, consultation with students, and time spent in the campus library. *Weissman v. Commissioner*, T. C. Memo. 1983-724, affd. 751 F.2d 512 (2d Cir. 1984).

[3] "In the case of educators, the focal point approach does not always adequately distinguish between individuals with *very different* employment activities." *Weissman v. Commissioner*, 751 F.2d at 514. (Emphasis added.) The same approach was taken in *Meiers v. Commissioner*, 782 F.2d 75 (7th Cir. 1986), revg. a Memorandum Opinion of this Court. The Seventh Circuit clearly found that Mrs. Meiers' activities

The majority states that "If such a comparison [time spent at different places of business] were the determining standard, however, it would preclude the deduction approved of by the Secretary in his proposed regulations." (Majority op. p. 12.) The *proposed* regulations, cited by the majority, say that an outside salesman's home office *may* qualify as his principal place of business. The home office of an outside salesman, who spends most of his time visiting many different customers at different locations, might be his principal place of business in comparison with any other place. That situation has nothing to do with the facts in this case, and it is inappropriate to try to anticipate application of *proposed* regulations to facts that are not before this Court. In any event, it would be error to reject the test adopted by the Circuit Courts of Appeals because of a *proposed* regulation. Proposed regulations are not entitled to judicial deference. *Natomas North America, Inc. v. Commissioner*, 90 T.C. 710, 718 n.11 (1988); *North Ridge Country Club v. Commissioner*, 89 T.C. 563, 579-580 (1987), revd. on other grounds 877 F.2d 750 (9th Cir. 1989); *Laglia v. Commissioner*, 88 T.C. 894, 897 (1987); *Scott v. Commissioner*, 84 T.C. 683, 690 (1985); *F. W. Woolworth Co. v. Commissioner*, 54 T.C. 1233, 1265-1266 (1970).

The amount of time spent at the home office, while of major importance, is not necessarily the only consideration. Another is the importance of the business functions performed by the taxpayer in the home office. *Meiers* v. *Commissioner*, 782 F.2d at 79; *Weiss-*

---

at her home office and at the laundry were different, but of equal importance. Time spent at the respective places of business thus became the deciding factor. *Meiers v. Commissioner*, 782 F.2d at 79.

man v. *Commissioner*, 751 F.2d at 515; *Drucker* v. *Commissioner*, 715 F.2d at 69. Petitioner's business was being an anestheologist. He administered to patients at the hospital and never met patients at his home office. His use of the home office to read medical journals, arrange his schedule, and perform billing activities was no doubt essential to his medical practice. However, if one were to rank the importance of those activities against the actual performance of medical services that took place exclusively during the 30 to 35 hours that he spent each week at the hospitals (24 to 28 at Suburban), there is no question that his hospital based activities were more important to his anestheology practice than his home office activities. In all the aforementioned appellate court opinions wherein this Court was reversed, there was a specific qualitative determination that the home office activities were at least as important to the taxpayer's business as the activities performed away from the home office. The new test adopted by the majority makes no provision for weighing the relative importance of petitioner's hospital activities versus his home activities.[4]

Even if we were to find that petitioner's home office activities and his treatment of patients were of equal importance to his medical practice, existing precedent

---

[4] The majority describes petitioner's home office activities as "essential to his medical practice but * * * *ancillary* to the primary income generating services petitioner performed as an anesthesiologist * * *." (Majority op. p. 9.) (Emphasis added.) The word "ancillary" is most often used to describe something that is subordinate to that which is principal or primary. Webster's Third International Dictionary (Unabridged) (1986); see Black's Law Dictionary, pp. 78, 79 (5th ed. 1979).

would still require us to decide which place of business was the one where "the dominant portion of his work is accomplished." *Weissman v. Commissioner*, 751 F. 2d at 514; *Meiers v. Commissioner*, 782 F.2d at 79. See *Pormarantz v. Commissioner*, *supra*. Comparing the amount of time petitioner spent working at his respective places of business clearly leads to the conclusion that Suburban Hospital was where petitioner spent most of his business time.

In *Pomarantz* v. *Commissioner*, *supra*, we and the Ninth Circuit denied a home office deduction under circumstances strikingly similar to those in the instant case. Dr. Pomarantz was an emergency room physician. All of his treatment of patients occurred at the hospital where he spent about 33 to 36 hours per week. The hospital did not provide adequate office space. Dr. Pomarantz maintained a home office at which he kept an extensive medical library, business records, and copies of patient charts. He spent time at his home office reading medical publications, conducting patient follow-up activities, and performing business-related duties. In certain weeks, the time spent in home office business activities exceeded time spent at the hospital; but, in most weeks and as an average, he spent more time per week working at the hospital. We described Dr. Pomarantz' home office activities as "clearly essential" to his medical practice. In denying the home office deduction, we held that under either the "focal point" test or the test applied in the Second and Seventh Circuits, the taxpayer's principal place of business was at the hospital.

> In terms of importance the principal place or focal point of petitioner's business was clearly the hospital. Petitioner diagnosed and treated injuries and illnesses and consulted with pa-

tients, at the hospital. As a practicing physician, the hands-on treatment of patients is the essence of petitioner's profession. Following up on patients whom he had treated was unquestionably an important part of his duties as a physician. Continuing education in a rapidly developing and changing area of medicine such as emergency care is also clearly essential. Nevertheless, we do not find that petitioner's activities conducted in his home office were of sufficient importance to make it his principal place of business under section 280A(c)(1)(A).

We have considered the fact that the hospital did not provide petitioner with adequate office space in which to read and study and to perform all patient follow up to the extent necessary. Furthermore, petitioner needed space in which to maintain corporate records. Nevertheless, these facts do not dissuade us from our conclusion that the hospital was the focal point of petitioner's trade or business. Many professions require some work at home, but this does not make the home office the taxpayer's principal place of business. Although his home office was appropriate and helpful, that is simply no longer the standard in light of the desire of Congress to restrict and clarify home office deductions via enactment of section 280A. [*Pomarantz v. Commissioner*, T. C. Memo. 1986-461, 52 T.C.M. 599, 602, 55 P-H Memo T. C. par. 86,461 at 2131.]

In affirming our opinion the Ninth Circuit held:

> Without adopting a specific standard, we believe that under any of these tests, the hospital, rather than the home, was Dr. Pomarantz's principal place of business. He consistently spent more time on duty at the hospital rather than at home. The essence of his profession is the hands-on treatment of patients which he did only at the hospital and never at home. Finally, he generated income only by seeing patients at the hospital not studying or writing at home. His home office was not his principal place of business within 26 U.S.C. § 280A(c)(1)(A). [*Pomarantz v. Commissioner*, 867 F.2d at 497-498.]

The majority attempts to distinguish *Pomarantz* by saying that Dr. Pomarantz "spent an insubstantial amount of time in his home office." (Majority op. p.13.) Neither this Court nor the Ninth Circuit Court of Appeals found that Dr. Pomarantz spent an insubstantial amount of time in his home office. The Ninth Circuit simply observed that Dr. Pomarantz "spent *more* time on duty at the hospital rather than at home. * * *" *Pomarantz v. Commissioner*, 867 F.2d at 497. (Emphasis added.) After describing the various activities Dr. Pomarantz performed in his home office, we found as a fact that "In certain weeks the time required in these additional [home office] activities surpassed the amount of time petitioner spent treating patients at the hospital. In most weeks, however, and as an average, petitioner spent more time per week working shifts at the hospital than working in his home office." *Pomarantz v. Commissioner*, T.C. Memo. 1986-461, 52 T.C.M. at 600-601, 55 P-H Memo T.C. at 2129. This finding does not indicate in any way that Dr. Pomarantz' home office time was insubstantial. *Pomarantz* cannot be distinguished on the basis suggested by the majority, and the majority makes no attempt to draw any other distinctions.

In two recent unpublished opinions, the Sixth Circuit Court of Appeals seems to have adopted the same standards for purposes of section 280A as the

Ninth Circuit. *Kisicki v. Commissioner*, 871 F.2d 1088 (6th Cir. 1989), affg. a Memorandum Opinion of this Court; *Dudley v. Commissioner*, 860 F.2d 1078 (6th Cir. 1988), affg. a Memorandum Opinion of this Court.

The majority holds that the principal place of business for a doctor who performs all medical services at the hospital and spends a lesser amount of time performing his administrative and billing activities in his home, is the place where administrative and billing activities are carried out. This new test appears to be an insupportable and unexplained reincarnation of the "focal point" test that merely shifts the focus from the place where the taxpayer meets and deals with his patients, customers, students, audience, etc., to the place where administrative and billing activities are performed.

It may seem unfair to deny deductions for home office expenses that are essential to a taxpayer's business. Deductions, however, are a matter of legislative grace. Section 280A clearly disallows home office deductions unless there is a specific statutory exception. There is no exception for home office activities that are "essential" or "substantial." In enacting section 280A, Congress sought to provide definitive rules to alleviate administrative burdens inherent in trying to distinguish between business and personal expenses. *Baie v. Commissioner*, 74 T.C. 105, 108-109 (1980). Surely, Congress anticipated that the effect of section 280A would be to deny deductions to some taxpayers despite the business necessity of activities performed at home. We are not free to disregard a specific, albeit sometimes harsh, statutory restriction on home office deductions by superimposing our own concept of what the law should be. *Baie v. Commissioner*, *supra* at 110.

The majority overrules precedent in this Court on the basis of prior reversals and then fails to adopt the only other test found acceptable by the four circuit courts of appeals mentioned. The majority provides no criteria for comparing a taxpayer's several places of business in order to determine which is the "principal place of business."[5] I would apply the test adopted by the Second and Seventh Circuit Courts of Appeals, which has also been used by the Sixth and Ninth Circuits. Under that test, we must determine the place where the dominant portion of the taxpayer's work is accomplished. Under that test, petitioner is not entitled to a home office deduction.

NIMS, CLAPP, and PARR, *JJ.*, agree with this dissent.

---

[5] Principal means "Chief; leading; most important or considerable; primary. Highest in rank, authority, character, importance, or degree." Black's Law Dictionary, p. 1073 (5th ed. 1979).

APPENDIX C

UNITED STATES TAX COURT

Docket No. 35698-87

NADER E. SOLIMAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

DECISION

Pursuant to the opinion of the Court filed January 18, 1990, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from petitioner for 1983 in the amount of $17,395.50.

That there is an addition to tax due from the petitioner for 1983, under the provisions of I.R.C. § 6651(a)(1), in the amount of $869.78.

That there is an addition to tax due from the petitioner for 1983, under the provisions of I.R.C. § 6653(a)(1), in the amount of $869.78.

That there is an addition to tax due from the petitioner for 1983, under the provisions of I.R.C. § 6653(a)(2), in an amount to be determined equal to 50% of the interest due on $14,684.50 of the deficiency.

That there is an addition to tax due from the petitioner for 1983, under the provisions of I.R.C. § 6661, in the amount of $3,671.12.

(Signed) Jules G. Körner III
Judge

Entered: Apr. 23, 1990

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed August 22, 1991

No. 90-1807

NADER E. SOLIMAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT

On Petition for Rehearing with Suggestion for Rehearing In Banc

---

The appellant filed a petition for rehearing with suggestion for rehearing in banc. A member of the Court requested a poll on the suggestion for rehearing in banc, and a majority of the judges voted to deny rehearing in banc. Judges Russell, Phillips, and Murnaghan voted to rehear the case in banc, and Chief Judge Ervin and Judges Widener, Hall, Sprouse, Wilkinson, Wilkins, Niemeyer and Hamilton voted against rehearing in banc.

The majority of the original judicial panel voted to deny the petition for rehearing.

The Court denies the petition for rehearing with suggestion for rehearing in banc.

Entered at the direction of Judge Phillips.

For the Court,

/s/ John M. Greacen
Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed August 29, 1991

No. 90-1807

SOLIMAN

v.

COMMISSIONER

MANDATE

The judgment of this Court dated 6/5/91 takes effect today.

JOHN M. GREACEN
Clerk

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 312324 45195